

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

RODOLFO H. PEREZ,

Plaintiff,

v.

JOSEPH PIAZZA, et al.,

Defendants.

CIVIL ACTION NO. 3:12-CV-227

(Judge Kosik)

FILED
SCRANTON

APR 19 2012

PER LS
DEPUTY CLERK

MEMORANDUM AND ORDER

AND NOW, THIS 19 DAY OF APRIL, 2012, IT APPEARING TO THE COURT THAT:

(1) Plaintiff, Rodolfo H. Perez, a prisoner confined at the Luzerne County Correctional Facility in Wilkes-Barre, Pennsylvania, filed the instant civil rights action pursuant to 42 U.S.C. §1983 on February 6, 2012, based on incidents which occurred while he was confined in the lockup section;

(2) The action was assigned to Magistrate Judge Thomas M. Blewitt for Report and Recommendation;

(3) On March 6, 2012, the Magistrate Judge issued a Report and Recommendation (Doc. 8) wherein he recommended that the plaintiff's complaint be dismissed, in part, and that the remaining excessive force claim be allowed to proceed against defendants, Corrections Officer Wilk and Lt. Domangauer;

(4) Specifically, the Magistrate Judge found that plaintiff's complaint failed to state any personal involvement of defendant Warden Piazza, and that he failed to state a claim upon which relief could be granted against any of the named defendants on the conditions of confinement claims. Finally, the Magistrate Judge found that the plaintiff stated a cognizable Eighth Amendment excessive force claim against defendants CO Wilk and Lt. Domangauer;

(5) Petitioner has failed to file timely objections to the Magistrate Judge's Report and Recommendation;

AND, IT FURTHER APPEARING THAT:

(6) If no objections are filed to a Magistrate Judge's Report and Recommendation, the plaintiff is not statutorily entitled to a de novo review of his claims. 28 U.S.C.A. §636(b)(1)(C); Thomas v. Arn, 474 U.S. 140, 150-53 (1985). Nonetheless, the usual practice of the district court is to give "reasoned consideration" to a magistrate judge's report prior to adopting it. Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987);

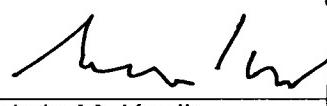
(7) We have considered the Magistrate Judge's Report and we concur with his recommendations. Defendant Piazza will be dismissed from the instant action without prejudice; plaintiff's Eighth Amendment conditions of confinement claims will be dismissed without prejudice as to all defendants. Plaintiff, if he so chooses, will be allowed to amend his pleadings against defendant Piazza and on the conditions of confinement claims. Finally, plaintiff's Eighth Amendment excessive force claim against defendants CO Wilk and Lt. Domangauer will be remanded to the Magistrate Judge for further proceedings;

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

(1) The Report and Recommendation of Magistrate Judge Thomas M. Blewitt dated March 6, 2012 (Doc. 8) is **ADOPTED**;

(2) The plaintiff's complaint is **DISMISSED** as to defendant Piazza without prejudice. The plaintiff's Eighth Amendment conditions of confinement claim is dismissed without prejudice as to all defendants. Plaintiff will be allowed twenty (20) days from the date of this Order in which to amend his pleadings against defendant Piazza and in which to amend his pleadings on the conditions of confinement claims. Finally, plaintiff's Eighth Amendment excessive force claim against defendants CO Wilk and Lt. Domangauer will be remanded to the Magistrate Judge for further proceedings; and

(3) The above-captioned action is **REMANDED** to the Magistrate Judge for further proceedings.



Edwin M. Kosik
United States District Judge